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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 98 174 53170 Office: California Service Center Date: 03 MAY 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), a member of the professions holding an advanced degree. The petitioner seeks employment as an environmental engineer specializing in wastewater purification technology. At the time of filing, the petitioner was the president of [redacted] Company, Vladivostok, Russia. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> [The petitioner] is an experienced, cutting edge engineering researcher in the field of construction engineering, environmentally compatible technology and its application. His work which includes the development of patented technology for the purification of waste water has been recognized as a breakthrough in the ability to retrofit waste water treatment systems to bring them into compliance with U.S. Environmental Protection Agency standards. . . .
>
> Advances in water treatment facilities and technologies include the use of bio-remediation, a process used in [the petitioner's] patented technology. His method includes the introduction of a bacteria culture designed to consume and remove waste in the water. His invention is important not only for its effectiveness, but for its efficiency as well. His system is particularly important for smaller water reclamation facilities which cannot afford to build extensive new facilities, as it is very conducive to retrofitting existing waste water systems. His system has been recognized for its costs savings both in construction and operations.

The petitioner submits background documentation pertaining to his field of research, which establishes the intrinsic merit and national scope of the petitioner's work. This background material, however, does not specifically mention the petitioner or his work, and therefore it

cannot establish that the petitioner's work regarding waste water remediation is more important than that of other professionals in the same specialty.

Along with a published article by the petitioner, and copies of patent documents, the petitioner submits several witness letters. [redacted] director of the Division of Statewide Public Service for Alaska's Department of Environmental Conservation, states:

> [The petitioner] is a world recognized construction engineer in the area of wastewater management, recycling and reuse. His work has had significant impact in the wastewater industry based on his development of unique wastewater treatment technology. . . . His patented systems are especially effective as they not only reduce the space necessary for wastewater treatment but the overall costs as well. His systems have in fact been successfully implemented internationally.

Dr. [redacted] an associate with the environmental engineering consulting firm Malcolm Pirnie, Inc., states that the petitioner "is a widely respected expert in the field of wastewater treatment. He is especially active in developing and promoting the new brush-type biofilter technologies that appear to represent one of the prospective ways to intensify biological wastewater treatment processes."

[redacted] a partner of the project management company 2MS, Inc., states that the petitioner "has developed a unique low cost system that provides a highly efficient process that is very conducive to retrofitting existing waste water treatment systems that are in noncompliance with U.S. Environmental Protection Agency standards. The methods that he has produced are invaluable to this country as well as to the world."

[redacted] principal of BioCycles Environmental Consulting, states that the petitioner "has firmly established himself as a recognized construction engineer in the realm of environmental concerns," who "has invented important technology involving the biological cleaning of wastewater."

Other witnesses who have collaborated with the petitioner on various projects in eastern Russia assert that the petitioner is "a prominent and exceptional engineer" with "extraordinary talent, outstanding skills and experience," who has engaged in "significant and highly acclaimed" work. One witness, [redacted], chief technologist of the Water Canal Department of Vladivostok Region, states that the petitioner's "patented technology is currently being used by many cities around the world." Documents in the record identify six Russian cities that have adopted the petitioner's remediation technique. To support assertions regarding the petitioner's prominence, the petitioner has submitted documentation showing that the petitioner has played leadership roles at international conferences as well as in national organizations in Russia.

The director denied the petition, stating that the petitioner has not shown how his work in the U.S. would have a greater impact than that of other qualified professionals. The director noted

"[t]here appears to be no relationship between the petitioner/beneficiary and U.S. environmental agencies."

On appeal, counsel asserts that the director erred in requiring "a relationship to a U.S. environmental agency," and that newly available evidence further establishes the petitioner's eligibility. Certainly counsel is correct in asserting that there is no fixed rule requiring an existing relationship between an alien and U.S. regulatory bodies. The petitioner is still in Russia, and appears to have traveled to the U.S. only briefly for technical conferences, indicating that he would have had little opportunity to form such ties. We note that the record shows that the petitioner has been extensively involved with analogous bodies in eastern Russia. Also, as counsel notes, the petitioner has submitted a letter from an official of a statewide environmental agency in the U.S. (Marianne G. See, whose letter we have discussed above).

Most of the new evidence submitted on appeal consists of background documentation regarding a predicted shortage of clean water. This documentation includes excerpts from Tapped Out: The Coming World Crisis in Water and What We Can Do About It by former U.S. Senator Paul Simon. Sen. Simon, now the director of the Public Policy Institute at Southern Illinois University, offers a letter in support of the appeal, in which he states:

> [The petitioner] is an experienced and innovative environmental engineer who has implemented [water] recycling/reuse facilities in Russia. He has acquired international recognition in the environmental arena for his technological advances in he wastewater management and water purification fields. [The petitioner] created a method, using bio-remediation, that introduces bacteria culture designed to consume and remove waste in the water. His invention is both cost and space efficient, allowing it to be implemented to retrofit existing wastewater facilities as well as to build extensive new facilities.

His authorship of a book on the subject illustrates Sen. Simon's familiarity with the topic of water remediation; his letter clearly amounts to more than a courtesy letter or routine response to an inquiry from a colleague or former constituent. Several witnesses, from throughout the United States, have attested to the petitioner's special value as an expert in water remediation. The petitioner, in this instance, is not merely a researcher who investigates remediation methods. Rather, he has established himself as an internationally respected expert who has been the principal motivator behind large-scale projects. While some witnesses are identified as the petitioner's collaborators, not all of them are, and even then the collaborators have worked with the petitioner on projects of significant size. The petitioner's capacity for innovation is beyond doubt, as demonstrated by his numerous patents. The patents alone do not establish eligibility for the waiver, of course, but in conjunction with the other evidence of record, they establish that the petitioner is actively involved in creating solutions rather than simply keeping himself abreast of the latest innovations by others in the field. Upon consideration, we find that the preponderance of the evidence in the record favors approval of the waiver request and, therefore, of the petition.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the environmental engineering community recognizes the significance of this petitioner's work rather than simply the general area of endeavor. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.